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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 386th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 May 1999, at 10 a.m.

Chairman: Mr. BURNS

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FUTURE MEETINGS OF THE COMMITTEE

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GE.99-41845 (E)

The meeting was called to order at 10 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION:

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (agenda item 9 (b)) (continued)

Draft proposal for a plan of action to strengthen the implementation of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture (HRI/MC/1999/Misc.1)

1. The CHAIRMAN invited the Rapporteur on the draft plan of action to present the draft, which had been revised once.

2. Mr. MAVROMMATIS (Rapporteur on the draft) considered that the present version of the draft more adequately reflected the growing importance and workload of the Committee against Torture, the first draft having focused on the experience gained within the Human Rights Committee. The Pinochet case, in which the Convention against Torture had been the only international instrument invoked by the British House of Lords, illustrated the Committee's increasingly high profile. He thought that the report should more clearly stress the Committee's specific nature and particular needs. Special emphasis should be put on the importance to the Committee of a third week for each session, of additional time for systematic meetings before sessions and of the possible establishment of working groups, in particular a working group on communications. In that way, the Committee could provide genuine follow-up to procedures initiated under article 20, to communications considered under article 22 and to recommendations made to States parties following consideration of their periodic reports.

3. Mr. SØRENSEN agreed that the second version of the proposal was a great improvement on the preceding one, because it reflected more clearly the specific nature of the Committee against Torture. In order to make it clearer that when it received information that appeared to indicate that torture was systematically practised in a State party, the Committee was bound to invite the State party to cooperate in the consideration of the information received, he suggested that the word "may" be replaced by "shall" in paragraph 18 of the draft. He wondered whether the creation of a computer database on communications, mentioned in paragraph 53, was compatible with the confidential nature of the initial phases of consideration of a communication, which were systematically carried out in closed meetings.

4. Overall, his assessment of the plan of action was positive, although he found it somewhat lacking in long-term vision, in particular with regard to the prevention of torture. In its recommendations to States parties, the Committee systematically asked them to ensure that the different categories of public servants received specific training on the prohibition of torture. Should the same thing not be done with United Nations peacekeeping forces, which received no specific training? He recalled the problems encountered in

Somalia and Bosnia, where soldiers had been entrusted with police duties, and considered that the different committees could cooperate on technical cooperation activities on that specific point.

5. Given the overwhelming importance of the medical aspect, as evidenced once again by current events in Kosovo and the flow of traumatized refugees requiring medical and psychological care, he felt that the Committee should recommend in the draft that at least two officials be assigned to the Office of the High Commissioner for Human Rights, one a specialist in developed countries, the other in developing countries, but both having the specific medical qualifications that were indispensable for the Committee against Torture but also very useful for other committees.

6. Mr. YAKOVLEV, referring to paragraph 30 of the draft, wondered whether the suggested innovation of sending human rights advisers on mission to help national Governments set up an infrastructure for the preparation of reports would not constitute interference in the internal affairs of States parties, even though the need to provide that kind of assistance made the idea a very tempting one. Thought would have to be given to the terms and conditions of such assistance so as to avoid that pitfall.

7. Mr. MAVROMMATIS and Mr. EL MASRY recalled that providing assistance to States parties for the preparation of their reports was not a new idea, since such assistance had been supplied for the past 20 years or so on a non-obligatory basis; it was always provided at the request of the State party. Mr. Mavrommatis added that the main aim was always to open and continue a dialogue with the State party and not to judge or to impose working methods.

8. Mr. YU Mengjia shared Mr. Sørensen's concern about the confidential nature of communications. With regard to paragraph 42, he suggested that the words "and the CAT" be added to the tenth line of the paragraph, after "HRC".

9. Pointing to paragraph 28 (6), according to which the States parties should give an account in their reports of the "factors and difficulties" that might impede respect for human rights, he wondered whether States parties would not be tempted to invoke those difficulties in an attempt to justify any violations of their obligations.

10. Mr. EL MASRY agreed with Mr. Sørensen that it was important to provide United Nations peacekeeping and other forces with specific training on the prohibition and prevention of torture.

11. In addition, he considered it vital to specify in paragraph 31 that the "sources" from which the committees obtained their information be "trustworthy" or "appropriate".

12. The CHAIRMAN agreed with Mr. Sørensen that it was important, in particular for the Committee against Torture, to have specialized medical knowledge available to the secretariat and endorsed the proposal Mr. Sørensen had made to that end.

13. Mrs. LEE (Office of the United Nations High Commissioner for Human Rights) noted the observations made by the members of the Committee concerning the draft plan of action and promised she would take them into account in revising the text.

14. With regard to Mr. Sørensen's proposal that training be provided to peacekeeping forces in the framework of technical cooperation, she observed that the High Commissioner's Office already provided training to members of the military police and of other services under its technical cooperation programme and that close coordination would therefore be required to prevent any overlapping of activities. With regard to the provision of medically qualified staff, given that nothing had been done in that area, it might be worthwhile examining the possibility.

15. In answer to Mr. Yu's comment on paragraph 28 (6), she said that States parties were asked to mention factors and difficulties impeding implementation of the treaties so as to enhance the dialogue with States parties by giving them the possibility to outline exceptional circumstances - war, regional tension or other circumstances - affecting the implementation of the various human rights instruments.

16. With regard to training activities in connection with the preparation of periodic reports by States parties, a matter mentioned in paragraph 30 of the draft plan of action, she indicated that the main idea of the plan of action was to continue activities of that type and to extend them by helping the Governments requesting them to put in place a common structure for the different ministries involved in the implementation of human rights treaties. The aim was to enable States parties to present high-quality reports and to be aware of the true situation in their countries with regard to human rights. That aid would in no case be imposed on States; only those which so wished would receive it.

17. With regard to the databases, she stated that it had taken three years to set them up and that further improvements were required to facilitate their use. The databases had been intended to provide help to the committees, whose workload was constantly increasing. Both the treaty bodies and the communications databases had a confidential section to which the public did not have access. That point would be specified in the revised draft of the plan of action.

18. In terms of reinforced cooperation between treaty bodies, she observed that HIV/AIDS had been mentioned in paragraph 45 of the draft plan of action only as an example of a possible area of cooperation. In fact, it was difficult to bring together all the members of the treaty bodies to discuss general matters. A meeting of the persons chairing treaty bodies was currently being held on the difficulties facing those bodies and conclusions would be adopted on the policy to adopt, but it had proved difficult to hold in-depth discussions on general guidelines arising from that kind of meeting and to provide follow-up.

19. The CHAIRMAN asked which part of the draft plan of action would deal with the matter of medically qualified personnel.

20. Mrs. LEE (Office of the United Nations High Commissioner for Human Rights) indicated that that point would be discussed in connection with human resources matters. A list would be drawn up of all personnel needs for each activity approved and mention would be made of the need for medical personnel.

21. Mr. YU Mengjia asked if the members of the Committee could have access from their country to the confidential section of the databases.

22. Mrs. LEE (Office of the United Nations High Commissioner for Human Rights) said that since that information was not available on the Internet, the Committee members could not have access to it by that means, but that those who had a laptop could, as the members of the Committee on the Rights of the Child already did, download updated confidential information whenever they came to Geneva.

23. Mr. EL MASRY pointed out that paragraph 54 of the draft plan of action contained a suggestion to establish a database on all non-governmental organizations (NGOs) cooperating with the treaty bodies, but that apparently no guidelines had been laid down on how to determine whether those NGOs were trustworthy or not. He feared that some NGOs would bolster their credibility by taking advantage of the fact that they were listed in an official United Nations database.

24. Mr. SØRENSEN observed that the list was to be drawn up to facilitate the work of the committees monitoring implementation of human rights treaties, but that it would in no way imply recognition of those organizations by the United Nations.

25. The CHAIRMAN considered that that should be clearly indicated in the database. He thanked Mrs. Lee for her statement, welcomed the efforts made to prepare the draft plan of action and said he looked forward to receiving the revised draft.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Working methods of the Committee (continued)

26. The CHAIRMAN invited the members of the Committee to suggest ways of improving the Committee's working methods.

27. Mr. EL MASRY said that it would be useful to state at the beginning of a session, perhaps in the framework of a working group, which communications under article 22 of the Convention would be considered during the session and at which meeting.

FUTURE MEETINGS OF THE COMMITTEE (agenda item 8) (CAT/C/XXII/CRP.1/Add.7)

28. THE CHAIRMAN announced the dates of the Committee's sessions in 2000 and 2001, to be held in Geneva. The twenty-fourth session would be held from 1 to 19 May 2000, the twenty-fifth from 13 to 24 November 2000, the twenty-sixth from 30 April to 18 May 2001 and the twenty-seventh from 12 to 23 November 2001.

The public part of the meeting rose at 11.10 a.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 387th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Morocco (continued)

Second periodic report of Liechtenstein (continued)

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GE.99-41894 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Morocco (continued) (CAT/C/43/Add.2)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, the members of the delegation of Morocco resumed their places at the Committee table.

2. Mr. CAMARA (Country Rapporteur) read out the following text containing the conclusions and recommendations adopted by the Committee concerning the second periodic report of Morocco:

"1. The Committee considered the second periodic report of Morocco (CAT/C/43/Add.2) at its 380th, 383rd and 387th meetings, held on 6, 7 and 11 May 1999 (CAT/C/SR.380, 383 and 387) and has adopted the following conclusions and recommendations.

A. Introduction

2. The Committee warmly welcomes the second periodic report of Morocco.

3. To the Committee's gratification the report, produced in accordance with its guidelines for the preparation of periodic reports, is forthright on all subjects, as was the oral introduction by the head of the Moroccan delegation. The Committee also thanks the Moroccan delegation for the frank and constructive dialogue in which it engaged.

B. Positive aspects

5. The Committee notes with great satisfaction certain measures introduced by the State party with a view to meeting its commitments under the Convention, and in particular:

(a) Morocco's clear political will to establish to the full the rule of law, as extensively reflected in paragraphs 4, 6, 7, 8, 9, 10, 16 and 17 of the report;

(b) The payment of allowances to political prisoners recently released by the Moroccan State, which has also undertaken to bear the costs of any medical attention where necessary;

(c) The positive response to some of the recommendations made by the Committee after its consideration of Morocco's initial report, such as:

- The publication of the Convention in the Official Gazette, making it applicable throughout the territory of the Kingdom and enforceable against all authorities;

- The introduction of major human rights education and awareness-raising programme for law enforcement officers, and also for other categories such as schoolchildren;

- The reform of prison policy with a view to humanizing it.

C. Factors and difficulties impeding the application of the provisions of the Convention

6. The Committee has not noted any major factors or difficulties impeding the application of the provisions of the Convention in Morocco.

D. Subjects of concern

7. The Committee nonetheless declares itself deeply concerned about the following issues:

(a) The continued absence, in Moroccan criminal legislation, of a definition of torture fully consistent with that contained in article 1 of the Convention, and of provisions categorizing as offences all acts describable as torture, in compliance with article 4 of the Convention;

(b) The maintenance of the reservations entered to article 20 and the failure to make the declarations provided for under articles 21 and 22 of the Convention, which severely restricts the scope of implementation of the Convention in regard to Morocco;

(c) The persistence, despite the efforts undertaken, of allegations of torture and ill-treatment;

(d) The non-compliance of Moroccan legislation on return, expulsion and extradition is with the relevant provisions of the Convention.

E. Recommendations

8. The Committee recommends that the State party should:

(a) Introduce into its criminal legislation a definition of torture fully consistent with that contained in article 1 of the Convention and categorize as offences all acts describable as torture;

(b) Withdraw its reservation to article 20 and make the declarations provided for under articles 21 and 22 of the Convention;

(c) Bring the legislation on return, expulsion and extradition into conformity with the relevant provisions of the Convention;

(d) Urgently institute, if it has not yet done so, impartial enquiries into the serious allegations of human rights violations brought to the attention of the Moroccan delegation by the Committee during its consideration of the second report and ensure that, where such allegations are substantiated, appropriate sanctions are imposed on those responsible and fair compensation is awarded to the victims."

3. Mr. BENJELLOUN-TOUIMI (Morocco) thanked the Committee for its constructive spirit and fair assessment. He considered the exercise to have been extremely beneficial; he was gratified at the positive elements that had been identified and hoped that the next time Morocco met with the Committee it would be able to report on the implementation of its recommendations.

4. The delegation of Morocco withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Second periodic report of Liechtenstein (continued) (CAT/C/29/Add.5)

5. At the invitation of the Chairman, the members of the delegation of Liechtenstein resumed their places at the Committee table.

6. Mr. LANGENBAHN (Liechtenstein) welcomed the fact that the report had been on the whole well received. In reply to the question relating to paragraph 18, in the context of the preparatory work for the ratification of the Rome Statute of the International Criminal Court, consideration was being given to the possible inclusion in a law on cooperation with the Court of provisions for cooperation with the two ad hoc tribunals for the former Yugoslavia and Rwanda.

7. In regard to paragraph 42, while the public health officer normally attended arrested, detained or imprisoned persons, a private medical practitioner of the patient's own choice would be permitted in well-founded cases. A panel of doctors was on permanent call and patients were referred to specialists where appropriate.

8. On the subject of paragraphs 46, 49 and 59 visits to prisoners could be restricted only to prevent collusion, for example if the visitor and the prisoner talked to each other in a way not understandable to the officer present, and only for as long as the reason for such a restriction applied. Every arrested, detained or imprisoned person had the right at any time to receive the visit of a counsel for the defence, who was in practice always a lawyer although in theory any person could act as counsel. Visits by professional counsel were not monitored by any court officer. The reason why pre-trial detention was sometimes lengthy was that, his being a small country, many cases were of a cross-border nature and therefore involved several jurisdictions. However, pre-trial detention was imposed only where a strong suspicion existed and where no less stringent alternative was available.

9. In regard to paragraphs 53 and 54, the Austrian State was liable to pay compensation if representatives of the Austrian authorities had been responsible for the mistreatment or torture of prisoners sentenced by a Liechtenstein court and transferred to Austria for imprisonment. Female prisoners were totally isolated from male ones but, given the small number and short sentences of female prisoners in recent years, their facilities were usually empty, which made it impossible to employ female officers. Special rules applied to male officers dealing with female prisoners, and the latter were regularly visited by female social workers and permitted to talk to them unmonitored; body searches were always carried out by female police officers. Although no juveniles had been imprisoned in Liechtenstein for many years, the possibility existed of holding them separately from adult prisoners in a nearby Austrian prison.

10. In accordance with the international instruments to which Liechtenstein was a party, such as the Convention against Torture, Liechtenstein courts were competent under national law, to try crimes committed in foreign countries by foreigners, and a general rule existed that its criminal courts were competent to try all crimes, irrespective of where they had been committed and whether they were considered offences there.

11. In regard to paragraphs 24 and 25, conditions had been improved at the Vaduz penitentiary centre, notably in regard to staffing, visiting rights, remunerated work, entertainment and exercise, in response to the 1995 report of the European Committee for the Prevention of Torture. A detainee was permitted to have contact with his lawyer at any time, and to receive visits from any person he chose, provided that the investigation procedure and the work and order of the prison were not adversely affected. Any restriction on visits to prevent collusion could be appealed against and pre-trial detention could be prolonged only by decision of the upper court. Correspondence could be restricted only if its volume impaired the smooth running of the prison.

12. Finally, Liechtenstein had made a declaration in accordance with article 22 of the Convention.

13. The CHAIRMAN thanked the delegation of Liechtenstein for its succinct and focused replies and for its fine report.

14. The delegation of Liechtenstein withdrew.

The public part of the meeting rose at 3.50 p.m.